

1 Plaintiff Sophia & Chloe, Inc. for its Complaint against Defendant Brighton
2 Collectibles, Inc. alleges as follows:

3 **Parties**

4 1. Plaintiff Sophia & Chloe, Inc. (“Sophia & Chloe” or “plaintiff”) is a
5 corporation, organized and existing under the laws of the State of California, with its
6 principal place of business in San Diego, California. Sophia & Chloe is a high-end
7 jewelry designer, created and operated by Nathalie Sherman.

8 2. Defendant Brighton Collectibles, Inc. (“Brighton” or “defendant”) is a
9 corporation, organized and existing under the laws of the State of California, with its
10 principal place of business in the City of Industry, California. Brighton is the designer
11 and manufacturer of women’s fashion accessories, including jewelry.

12 **Jurisdiction and Venue**

13 3. The Court has subject matter jurisdiction over plaintiff’s claims under 15
14 U.S.C. § 1121(a) and 28 U.S.C. § 1338, in that plaintiff’s first claim for relief arises
15 under the Copyright Act, 17 U.S.C. §§ 501 et seq., a law of the United States, and
16 plaintiff’s second claim for relief arises under the Lanham Act, 15 U.S.C. §§ 1051 et
17 seq. Claims three and four are substantially related claims arising from the same set of
18 operative facts as the federal claims, thereby giving this Court supplemental jurisdiction
19 over these California claims under 28 U.S.C. §§ 1338(d) and 1367(a).

20 4. This Court has personal jurisdiction over defendant because defendant
21 conducts business nationally and has sold a substantial number of its products in this
22 judicial district.

23 5. Venue in the Southern District of California is proper under 28 U.S.C. §
24 1391 because it is the judicial district in which a substantial part of the events or
25 omissions giving rise to the claim occurred; defendant conducts substantial business in
26 this district; and defendant is subject to personal jurisdiction in this district. Brighton
27 has stand-alone stores in the San Diego area where it sells Brighton goods, as well as
28 independent stores to which Brighton wholesales its products. In addition plaintiff is

1 informed and believes, and thereon alleges, that Brighton owns and operates interactive
2 websites on which customers in the Southern District of California can view and
3 directly purchase its products.

4 **Facts**

5 **Sophia & Chloe is the Designer of High-end, Innovative Jewelry.**

6 6. Sophia & Chloe designs, distributes, and sells original and distinctive jewelry
7 and accessories for women. The company was created by Nathalie Sherman, who was
8 born in Marrakesh, Morocco. She started designing jewelry in 1996, after the birth of
9 her daughter Sophia. In 1999, when her second daughter was born, she re-named her
10 line of designs, originally eponymous, “Sophia & Chloe.”

11 7. Completely self-taught, Ms. Sherman turned her passion and talent for design
12 into a thriving business. Her work has evolved from dainty, fashion-oriented collections
13 to bolder, more complex and evocative jewelry designs. Unchanged are her
14 uncompromising quality standards and the decidedly feminine and exotic aesthetic she
15 brings to each design. After sixteen years of investing her time, skills, and resources into
16 her jewelry designs, it is easy to spot her distinctive hand in each piece.

17 8. Ms. Sherman’s Sophia & Chloe designs are heavily influenced by her heritage
18 and home. Byzantine, Moroccan motifs are evident in her work, as is the casual easy
19 feel of her beloved coastal San Diego where she lives with her family.

20 **Sophia & Chloe Creates and Copyrights Unique Designs.**

21 9. Sophia & Chloe creates, distributes, and sells unique and original collections
22 of jewelry, including collections called Kiss, Buddha’s Kiss, and French Kiss (together,
23 “the Kiss collections”), all of which are copyrighted. The copyright registrations of
24 these designs, with accompanying artwork, are attached and incorporated into the
25 complaint at Exhibit A.

26 10. Sophia & Chloe’s entire casted division is based on Ms. Sherman’s intention
27 to create a substantial body of symbolic designs. With this goal in mind, Ms. Sherman
28 became interested in studying symbols, particularly ones that are culturally evocative and

aesthetically pleasing, and which would allow her to embed symbolism in each of her pieces.

11. Ms. Sherman turned to her own Moroccan heritage in this endeavor. Moroccan Henna tattoos, often applied at ceremonial events such as weddings and other celebrations, were of particular interest to her. In searching for the meaning of different arabesques incorporated within tattoos, she found this shape, a bracket— { — referred to as a “kiss” by henna tattoo artists. Ms. Sherman saw that the shape is also a “brace,” which means essentially “to belong together.” This symbolic arabesque shape is the basis of her original and independently created Kiss collections, examples of which are pictured below:



12. Every one of Sophia & Chloe’s casted pieces includes a symbol artfully embedded within it. These symbolic collections, and most notably the Kiss collection, are what Sophia & Chloe, Inc. is most closely associated with by its clients and collectors. Plaintiff’s Kiss designs are included in each of Sophia & Chloe’s best-selling

1 and most important collections: “Signs of a Good Life,” “Oh So Charming,” and
2 “Language of Bangles” (*see* Exhibit F). Sophia & Chloe’s website includes no less than
3 55 separate and distinct offerings from its Kiss collection. Sophia & Chloe, particularly
4 with its Kiss collections, has featured a distinctive trade dress which includes the bracket
5 (or “kiss”) shape, connected at a specific angular orientation; pieces of specific size and
6 scale; dangling stones or crystals; embedded and secret symbolic elements; smaller Kiss
7 designs surrounded by larger ones; and feminine accents.

8 13. Consumers have come to associate this trade dress with Sophia & Chloe.
9 Sophia & Chloe’s website features the bracket or “kiss” design across the top of its page
10 (*see* Exhibit E). The Kiss collections are featured prominently and significantly in
11 Sophia & Chloe’s social media presence: its Pinterest page features the French Kiss
12 necklace as its avatar (*see* Exhibit E); its Twitter page features the Kiss design as its
13 background wallpaper and the Kiss collections are frequent subjects of Twitter updates;
14 and the Kiss collection is featured regularly and prominently on Sophia & Chloe’s
15 Facebook fan page. Sophia & Chloe’s Kiss line has also been featured prominently in
16 local and national magazines and television from 2007 to 2012.

17 14. Sophia & Chloe has publicly advertised this line of jewelry since Spring 2007,
18 with its first sale in May 2007. On its publically facing website, Sophia & Chloe
19 describes the French Kiss as “inspired by the language of Moroccan Henna tattoos in
20 which each tiny arabesque has a distinct meaning. This romantic design repeats the
21 Henna symbol for the word ‘Kiss.’” The Buddha’s Kiss is described as “based on the
22 language of Moroccan henna tattoos. This romantic design repeats the henna symbol
23 for the word ‘Kiss’ into a Buddha shape.”

24 15. Sophia & Chloe is the exclusive owner (having received an assignment of
25 copyright from Ms. Sherman) of the following jewelry designs (collectively “the
26 Copyrighted Designs”), which have been registered with the Copyright Office as
27 original works as reflected in Exhibit A:
28

- a. Kiss Earrings with Mermaid Quartz, VA 1-700-833, February 22, 2010;
- b. Kiss Earrings with Rose Quartz, VA 1-703-158, February 22, 2010;
- c. Kiss Necklace with Mermaid Quartz, VA 1-703-177, February 22, 2010;
- d. Kiss Earrings with Garnet, VA 1-703-183, February 23, 2010;
- e. Kiss Earrings, VA 1-700-838, February 23, 2010;
- f. Kiss Necklace, VA 1-700-840, February 23, 2010;
- g. Small Kiss Earrings, VA 1-703-185, February 23, 2010;
- h. Small Kiss Necklace, VA 1-703-191, February 23, 2010;
- i. Small Kiss Earrings, VA 1-703-200, February 23, 2010;
- j. Kiss Necklace in Citrine, VA 1-703-188, February 23, 2010;
- k. Kiss Bangle Bracelet, VA 1-703-189, February 23, 2010;
- l. Buddha's Kiss, VAu 1-048-713, March 18, 2010;
- m. Buddha's Kiss, VAu 1-068-177, March 18, 2010.

16. Each of the copyright registrations listed in Exhibit A and in ¶ 15 are valid and subsisting, and are incorporated into Sophia & Chloe's Kiss collections.

17. Each piece of jewelry embodying the Copyrighted Designs has carried the copyright notice "Sophia & Chloe ©" stamped into the backside of the piece since its first publication. The website that hosts the jewelry has the copyright symbol. The line sheet / catalogue and all marketing materials also include copyright notices.

Brighton Infringes on Sophia & Chloe's Copyrighted Designs and Trade Dress.

18. Sophia & Chloe is informed and believes, and thereon alleges, that Brighton, having recognized the consumer awareness and goodwill associated with Sophia & Chloe's Copyrighted Designs, set about to unlawfully and intentionally usurp that goodwill for itself. In furtherance of this unlawful scheme to knock off Sophia & Chloe's designs, Brighton manufactured, advertised and sold, without the permission of plaintiff, copies of Sophia & Chloe jewelry that use Sophia & Chloe's Copyrighted Designs. Brighton's knock-offs are pictured below:



19. Brighton describes this line of jewelry designs as its “Toledo” collection. The Toledo collection includes two necklaces; two earrings (Post Drop and Statement), and two bracelets (Narrow Bangle and Bangle) (*see* Exhibit B). The Bangle is a derivative work, which infringes the plaintiff’s copyrights, and the remaining five Brighton pieces directly infringe those copyrights. Together, these six jewelry designs in the Toledo collection comprise the Brighton products that infringe on plaintiff’s Copyrighted Designs and are hereafter referred to as the Infringing Products.

20. Brighton—like a student changing a few words in a plagiarized article, then submitting it as original work based on those changes—made minor tweaks to Sophia

1 & Chloe's Copyrighted Designs before offering them to the public. These tweaks
2 (rounding off the horizontal sides on a French Kiss-knockoff pendant, for instance)
3 reveal Brighton's shallow effort to mask its copying of the Copyrighted Designs in
4 Sophia & Chloe's Kiss collection.

5 21. Exhibit C displays Brighton's Infringing Products next to products in Sophia
6 & Chloe's Kiss collection that incorporate the Copyrighted Designs. Examining the
7 products individually, it is clear that Brighton intentionally copied the individual
8 Copyrighted Designs. And examining the Kiss collection and Toledo collection as a
9 whole, it is also clear that Brighton copied the essence of the entire collection: using
10 identical sets of pieces (i.e., necklaces, earrings, and bangles) and even going as far as to
11 describe the collection as "arabesque."

12 22. Brighton began advertising its Infringing Products to its wholesale customers
13 in or about June 2012. Sophia & Chloe notified Brighton that it was infringing Sophia
14 & Chloe's Copyrighted Designs and demanded that Brighton cease and desist
15 advertising and sale of its Infringing Products before Brighton released those products
16 for retail sale. Brighton refused this demand, in willful disregard of Sophia & Chloe's
17 intellectual property rights.

18 23. On August 23, 2012, Brighton advertised this collection on its corporate
19 Facebook page, describing the pieces in remarkably similar language to that used by
20 Sophia & Chloe: "[W]e added more arabesque flourishes to our new Toledo pieces" (*see*
21 Exhibit D). On its publicly facing retail website, Brighton similarly describes its
22 collection: "Beautiful Moorish inspiration plays out in this collection featuring
23 arabesque shapes" (*see* Exhibit D). On September 14, 2012, Brighton advertised its
24 Toledo Collection as part of its "Fall Jewelry: In Stores Now" on the front page of its
25 retail website (*see* Exhibit D).

26 24. Sophia & Chloe is informed and believes, and thereon alleges, that Brighton
27 designed, manufactured, marketed and/or sold the Infringing Products with the intent
28 to infringe upon Sophia & Chloe's Copyrighted Designs.

1 25. Brighton reviewed Sophia & Chloe marketing materials for the Copyrighted
2 Designs incorporated in the Kiss collections, before Brighton designed and/or
3 manufactured the Infringing Products.

4 26. Specifically, the e-mail address for Brighton's founder, owner and President
5 Jerry Kohl—jkohl@brighton.com—joined Sophia & Chloe's mailing list on November
6 24, 2009. Individuals on this mailing list receive updates via e-mail on Sophia &
7 Chloe's on new products, special sales, and events. Sophia & Chloe advertised its Kiss
8 collection and Copyrighted Designs through this mailing list, and Kohl started
9 accessing these advertisements on November 25, 2009, including an advertisement of
10 the Kiss design. Sophia & Chloe continued to send out e-mails to individuals
11 registered with its mailing list advertising and promoting its Kiss collection throughout
12 2009, 2010, 2011, and 2012. Between April 25, 2012 and October 5, 2012, Kohl
13 opened twelve of the fifteen e-mails sent by Sophia & Chloe a total of 174 times,
14 including e-mails that featured products in the Kiss collections.

15 27. Sophia & Chloe is also informed and believes, and thereon alleges, that
16 Brighton executives and/or employees viewed the Copyrighted Designs incorporated in
17 the Kiss collections at retail outlets before designing and/or manufacturing the
18 Infringing Products.

19 28. Brighton's Infringing Products are inferior in quality to Sophia & Chloe's
20 products. As a result, Brighton's marketing, sale, and distribution of its Infringing
21 Products have damaged and will continue to damage Sophia & Chloe's reputation and
22 goodwill.

23 29. Sophia & Chloe informed Brighton that its Infringing Products infringed on
24 Sophia & Chloe's Copyrighted Designs in July 2012, and demanded that Brighton
25 cease all sales and marketing of the infringing products. Brighton refused to do so,
26 thereby necessitating this action.

27 30. Brighton's acts have caused and will continue to cause irreparable harm and
28 injury to Sophia & Chloe for which it has no adequate remedy at law.

**First Claim for Relief
(Copyright Infringement)**

31. Plaintiff hereby incorporates paragraphs 1 through 30 above, each as though fully set forth herein.

32. Plaintiff has a valid right, title, and interest in the Copyrighted Designs, which each constitute copyrighted and protected artistic expression fixed in a tangible medium. Such copyrights confer upon plaintiff the exclusive rights and privileges in and to the copyrights in the Copyrighted Designs.

33. Defendant has infringed on the copyrights in the Copyrighted Designs, by obtaining, advertising, and selling unauthorized copies of same without consent by plaintiff, after being put on notice that the counterfeit accessories were unlicensed and unauthorized copies, the advertising and sale of which were illegal.

34. Defendant has engaged in the conduct described above, and will continue to engage in the conduct described above in willful disregard of plaintiff's rights under 17 U.S.C. §§ 501 et seq.

35. By reason of defendant's actions, plaintiff has suffered, and will continue to suffer, substantial damage to its reputation and goodwill, as well as diversion of trade and loss of revenue in an amount not yet ascertained.

36. Plaintiff is informed and believes, and thereon alleges, that defendant willfully infringed on plaintiff's Copyrighted Designs by knowingly engaging in acts that infringed on plaintiff's copyrights after plaintiff registered and received copyright protection over the Copyrighted Designs. Therefore, under 17 U.S.C. §§ 504, 505, plaintiff is entitled to statutory damages in the amount of up to \$150,000 for each work infringed and for its costs and attorneys fees in bringing this action.

37. Defendant's acts have caused plaintiff irreparable injury, and unless restrained and enjoined, will continue to cause irreparable injury. Ascertainment of actual damages which would afford plaintiff adequate relief for such acts would be difficult, such that plaintiff's remedy at law is not adequate to compensate it for injuries inflicted

1 and threatened by defendant.

2 **Second Claim for Relief**
3 **(Trade Dress Infringement)**

4 38. Plaintiff hereby incorporates paragraphs 1 through 37 above, each as though
5 fully set forth herein.

6 39. These symbolic collections, and most notably the Kiss collection, are what
7 Sophia & Chloe, Inc. is most closely associated with by its clients and collectors.
8 Sophia & Chloe, particularly with its Kiss collections, has a distinctive trade dress which
9 is described in paragraph 12 above.

10 40. Plaintiff's trade dress has acquired secondary meaning. Sophia & Chloe's Kiss
11 collections are recognized by dealers and consumers on-sight as distinctively Sophia &
12 Chloe's.

13 41. Brighton designed and currently markets and sells Infringing Products that
14 incorporate plaintiff's trade dress.

15 42. Defendant is not now, and never has been, authorized by plaintiff to use
16 plaintiff's trade dress or any confusingly similar trade dress.

17 43. Defendant's marketing and sale of copies of Sophia & Chloe's Kiss collections
18 of jewelry is likely to cause confusion, mistake, and/or deception among consumers as to
19 the source, quality, and nature of defendant's goods.

20 44. Plaintiff is informed and believes, and thereon alleges, that as a proximate
21 result of the unfair advantage accruing to defendant's business from deceptively trading
22 on plaintiff's advertising, sales, and consumer recognition, defendant has made
23 substantial sales and profits in amounts to be ascertained. Based on the same acts,
24 plaintiff has been damaged and deprived of substantial sales of products in its Kiss
25 collections and has been deprived of the value of its trade dress as a commercial asset, in
26 amounts to be ascertained.

27 45. Plaintiff is informed and believes, and thereon alleges, that, unless restrained
28 by the Court, defendant will continue to infringe on plaintiff's trade dress, and that

1 monetary damages will not grant plaintiff adequate relief for the damage to its trade
2 dress. Further, plaintiff is informed and believes, and thereon alleges, that in the
3 absence of injunctive relief, customers are likely to continue being mistaken or deceived
4 as to the true source or origin of Brighton's goods.

5 46. Plaintiff is informed and believes, and thereon alleges, that defendant's acts
6 were committed, and continue to be committed, with actual notice of plaintiff's
7 exclusive rights and with an intent to cause confusion or mistake, or to deceive, and to
8 cause injury to the reputation and goodwill associated with Sophia & Chloe and its
9 products. Plaintiff is entitled to three times its actual damages or three times
10 defendant's profits, whichever is greater, as well as plaintiff's attorney's fees, and the
11 destruction of all infringing products and promotional materials.

12 **Third Claim for Relief**
13 **(Unfair Competition Under California Common Law)**

14 47. Plaintiff hereby incorporates paragraphs 1 through 46 above, each as though
15 fully set forth herein.

16 48. Plaintiff has invested substantial time, skill, and money in developing its
17 Copyrighted Designs and trade dress, and plaintiff's trade dress has acquired a
18 secondary meaning.

19 49. Defendant has copied plaintiff's trade dress in its products.

20 50. Plaintiff and defendant are business competitors.

21 51. Because plaintiff's Kiss collections and defendant's Infringing Products are
22 similar, the public is likely to identify defendant's products as those of plaintiff, or to
23 conclude that Plaintiff has some connection with the production of defendant's
24 products.

25 52. Defendant's conduct is unfair and unlawful.

26 53. Defendant's acts have caused plaintiff to lose profits and caused damage to
27 plaintiff's reputation and goodwill. The amount of damages is currently unknown but
28 will be established according to proof.

- 1 6. For punitive damages;
2 7. For statutory damages;
3 8. For attorneys' fees and costs; and
4 9. For such other relief as the Court may deem just and proper.
5

6 DATED: October 11, 2012

CHAPIN FITZGERALD LLP

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By: /s/ Kenneth M. Fitzgerald

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Kenneth M. Fitzgerald, Esq.

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Curtis G. Carll, Esq.

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Attorneys for Plaintiff

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Sophia & Chloe, Inc.

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Jury Demand

Plaintiff Sophie & Chloe, Inc. hereby demands a trial by jury for all issues so triable.

DATED: October 11, 2012

CHAPIN FITZGERALD LLP

By: /s/ Kenneth M. Fitzgerald
Kenneth M. Fitzgerald, Esq.
Curtis G. Carll, Esq.
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Sophia & Chloe, Inc.